

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

9 STEPHEN WENDELL SMYTHE,)
10 Petitioner,) 3:04-cv-00462-LRH-RAM
11 vs.)
12 CRAIG FARWELL, *et al.*,) **ORDER**
13 Respondents.)
14 /

15 On August 3, 2007, the Court dismissed with prejudice this *pro se* petition for a writ of
16 habeas corpus. (Docket #44). Judgment was entered on August 6, 2007. (Docket #45). Before the
17 Court is petitioner's motion for reconsideration, filed August 21, 2007. (Docket #46).

18 Where a ruling has resulted in final judgment or order, a motion for reconsideration may be
19 construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure
20 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J*
21 *Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236
22 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

25 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
26 discovered evidence which by due diligence could not have been
discovered in time to move for a new trial under Rule 59(b); (3) fraud
27 (whether heretofore denominated intrinsic or extrinsic),
misrepresentation, or other misconduct of an adverse party; (4) the
judgment is void; (5) the judgment has been satisfied, released, or
28 discharged, or a prior judgment upon which it is based has been

reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999).

14 In the Order of August 6, 2007, this Court determined that petitioner's grounds for habeas
15 relief were procedurally defaulted in state court, and that this Court was therefore barred from
16 considering the petition. (Docket #44). The Court further found that petitioner failed to demonstrate
17 cause and prejudice to excuse the procedural default. (Docket #44).

18 In the motion for reconsideration, petitioner claims that the Court’s decision “was reached
19 without full and proper consideration of the established facts in this case.” (Docket #46, at p. 1).
20 Petitioner continues to assert his innocence of the underlying crime of second degree murder.
21 (Docket #46). Petitioner has failed to make an adequate showing under either Rule 60(b) or 59(e)
22 that this Court’s Order dismissing the action should be reversed.

25 Dated this 17th day of January, 2008.

**LARRY R. HICKS
UNITED STATES DISTRICT JUDGE**